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Conference of the States Parties to the United Nations Convention against Corruption

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Working Group on the Prevention of Corruption
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Item 2 (a) (ii) of the provisional agenda*
Implementation of Conference resolution 5/4, entitled "Follow-up to the Marrakech declaration on the prevention of corruption", and of the recommendations made by the Working Group at its meeting held in September 2014: good practices and initiatives in the prevention of corruption

Integrity in public procurement processes and transparency and accountability in the management of public finances (articles 9 and 10 of the United Nations Convention against Corruption)

Note by the Secretariat

I. Introduction

1. In its resolution 5/4, the Conference of the States Parties decided that the Open-ended Intergovernmental Working Group on the Prevention of Corruption should continue its work to advise and assist the Conference in the implementation of its mandate on the prevention of corruption and should hold at least two meetings prior to the sixth session of the Conference, to be held in 2015.

2. The Conference further decided that the Working Group shall continue to follow the multi-year workplan, in accordance with which, the Working Group, at its meeting held in September 2014, decided that its sixth meeting would focus its attention on the following topics:

(a) Measures to prevent money-laundering (article 14 of the United Nations Convention against Corruption);

* CAC/COSP/WG.4/2015/1.

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(b) Integrity in public procurement processes and transparency and accountability in the management of public finances (articles 9 and 10 of the Convention).

3. At its second meeting, held in Vienna from 22 to 24 August 2011, the Working Group recommended that in advance of each future meeting of the Working Group States parties should be invited to share their experiences of implementing the provisions under consideration, preferably by using the self-assessment checklist and including, where possible, successes, challenges, technical assistance needs and lessons learned in implementation. The Working Group requested the Secretariat to prepare background papers synthesizing that information and decided that panel discussions should be held during its meetings, involving experts from countries who had provided written responses on the priority themes under consideration.

4. In accordance with the request of the Conference, the present note has been prepared on the basis of information relating to integrity in public procurement processes and transparency and accountability in the management of public finances (articles 9 and 10 of the Convention) provided by Governments in response to the Secretary-General's note verbale CU 2015/58/DTA/CEB of 10.03.2015 and the reminder note verbale CU 2015/97(A)/DTA/CEB of 24.04.2015.[1] By 31 May 2015, submissions had been received from 30 States. The submissions from the following countries contained information relating to the topic of integrity in the public procurement and management of public finances: Algeria, Argentina, Armenia, Austria, Belgium, Bosnia and Herzegovina, Czech Republic, Ecuador, Egypt, El Salvador, Germany, Honduras, Kuwait, Lebanon, Malaysia, Mexico, Montenegro, Oman, Philippines, Portugal, Republic of Moldova, Russian Federation, Spain, State of Palestine, Switzerland, Turkey, United States of America and Uruguay.

5. With the agreement of the countries concerned, the full text of the submissions has been made available on the page of the United Nations Office on Drugs and Crime website devoted to the meeting[2] and will also be incorporated into the thematic website of the Working Group developed by the Secretariat.[3]

6. In accordance with resolution 5/4, the Secretariat also sought inputs from the private sector in relation to the topics under consideration at the present meeting of the Working Group; however, no report from the private sector has been submitted within the extended deadline.

7. The present note does not purport to be comprehensive, but rather endeavours to provide a summary of the information submitted by States parties and signatories. It also includes supplementary information on related initiatives within the United Nations system.

[1] An account of good practices in the area of integrity in the judiciary, judicial administration and prosecution services in the context of article 11 of the Convention, was provided in a separate note by the Secretariat (CAC/COSP/WG.4/2013/2).

[2] www.unodc.org/unodc/en/treaties/CAC/working-group6.html.

[3] www.unodc.org/unodc/en/corruption/WG-Prevention/working-group-on-prevention.html.

II. Analysis of submissions of States parties and signatories

A. Thematic background

8. Government procurement is a key area of concern for the integrity of the public administration. Public procurement is estimated to account for 12 to 30 per cent of the gross domestic product of many countries and is thus a main element of the governments' spending programmes. It is the size of this market, as well as the fact that procurement requires close interaction between the public and private interests that makes it inherently vulnerable to corruption, putting government programmes and services at risk, undermining competition and slowing down development. The distortion of the market caused by corruption may further lead to low quality and inflated prices, affecting disproportionately the vulnerable. Establishing a fair, transparent and impartial public finance management and procurement system is a prerequisite for efficient government spending and for achieving effective provision of public services.

9. The importance of integrity in procurement for the fight against corruption is reflected in the United Nations Convention against Corruption in article 9. Under paragraph 1 of this provision, a State party must, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. This paragraph stresses the importance of public distribution of information, the establishment of clear selection and award criteria and tendering rules, the use of objective and predetermined criteria for decisions, an effective system of review of the decisions made, and measures to regulate personnel-related matters, such as declarations of conflicts of interest.

10. Paragraph 2 goes on to provide for measures to promote transparency and accountability in the management of public finances. Such measures may include procedures for the adoption of the national budget, timely reporting on revenue and expenditure, the establishment of system of accounting and auditing standards and related oversight, the introduction of effective and efficient systems of risk management and internal control and provisions for corrective action.

11. Paragraph 3 of article 9 stresses the importance of preserving the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and prevention of the falsification of such documents.

12. In considering the implementation of article 9 by States parties, reference can also be made to other internationally recognized standards or regional instruments which address in more detail the measures that States can take to enhance the integrity of the procurement and management of public finances. One such tool is the United Nations Commission on International Trade Law model law on procurement,[4] which contains procedures and principles aimed at achieving value for money and avoiding abuses in the procurement process. The model law promotes transparency, objectivity, fairness, participation, competition and integrity.

[4] www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure/2011Model.html.

13. Ensuring transparency is critical for successful prevention of corruption. The importance of keeping the public informed is underlined in Article 10 of the Convention, which requires States parties to take measures to enhance transparency in the public administration, including with regard to its organization, functioning and decision-making processes. This article underlines the need for States to put in place effective procedures or regulations allowing members of the public to obtain information on the organization, functioning and decision-making processes of its public administration and on administrative decisions and legal acts; to simplify administrative procedures to facilitate public access to the competent decision-making authorities; and to actively disseminate information, including periodic reports on the risks of corruption in the public administration.

B. Integrity in public procurement processes

Basing the national procurement system on principles of transparency, competition and objective criteria in decision-making and establishing in advance the conditions for participation, including selection and award criteria and tendering rules

14. Most of the States that provided submissions, including Algeria, Austria, Armenia, Bosnia and Herzegovina, Ecuador, Germany, Italy, Kuwait, Portugal, the Russian Federation, the United States and Uruguay, reported that the principles of transparency, competition and objectivity in decision-making had been made a part of the national legal system and were enforced by relevant national procurement bodies and offices. According to the submissions, these principles are implicitly followed in almost all procurement systems of the States parties.

15. Austria, Belgium, Germany, Italy and Sweden noted that their public procurement systems further took into account the directives of the European Union on procurement, 2014/24/EU and 2014/25/EU,[5] which had been integrated into national law.

16. Lebanon reported that the procurement system in the country was regulated by the Public Accountancy Act and not by a special law on procurement and that it had now sought to address the deficiencies identified in its procurement system through a draft law which was pending adoption.

Sufficient time to prepare and submit tenders and using by default an open tender procedure

17. Ensuring that all participants in the tender procedure have sufficient (and similar) time to prepare and submit the tender documents is a key requirement to ensure fair competition in the procurement process. Unreasonably short deadlines make proper preparation for the tender difficult and increase the risk that some of

[5] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC; Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, available online at: http://ec.europa.eu/growth/single-market/public-procurement/modernising-rules/reform-proposals/index_en.htm.

the participants in the procedure might attempt to acquire inside information and thus obtain an illegal advantage.

18. Similarly, using the open tender procedure by default reduces the risks to integrity associated with artificially restricted competition and ensures that the goods or services are procured at a fair market price. The free competition of many participants in the tender process makes bid rigging and collusion less likely and easier to detect.

19. All of the countries reported that their procurement systems allowed for a specific period of time to prepare and submit tenders, which in some countries depended on the complexity of the project. The time allocated for this phase of the procurement process however differed across countries, based on the legal and administrative traditions of the States parties.

20. In Algeria, the time limit for preparation and submission of offers was defined in each specific case in such a way as to ensure fair competition among all participants.

21. Mexico stated that deadlines, criteria and formalities of the procurement of goods and services or the execution of public works and services were regulated by the Law on Acquisitions, Leases and Public Sector Services and the Law on Public Works and Related Services. With reference to the requirement to allow for sufficient time to prepare and submit their tenders, both laws have set the deadline of 15 calendar days for national tenders and at least 20 days for international tenders from the date of the publication of the call for tenders.

22. Belgium noted that its national system had set out time limits for submitting tender offers that depended on the complexity of the project. A draft law was reported to be pending adoption, which would fulfil the requirements set out by the new European Union directives in the area and which would move towards fixed unified time limits based on the type of the procedure (open, restricted or competitive dialogue).

23. Armenia reported that its national legislation set out different timeframes for the submission of bids depending on the procurement procedure used, which ranged from 40 days in the case of the open procedure to seven days in the case of the "simple" procedure.

24. In Germany, an open tender procedure was used by default in most types of procurement. For professional services, however, the negotiated procedure with a prior public invitation to take part was the default procedure.

Transparent publishing of procurement decisions, including invitations to tender

25. All countries reported that they had certain requirements for transparency for different elements of the procurement process, including, as a minimum, the publication of the invitation to tender.

26. While the established practice in many countries was that this was done primarily through publication in newspapers or official journals, increasingly electronic tools and portals were reported as being utilized for this purpose.

27. Algeria, Kuwait, Lebanon, Oman and the United Arab Emirates reported that the advertisement of future tenders was compulsory. Publication of the tender notice

was required in the media, official bulletins of the public procurement agency, and the national newspapers with possibility for online publication.

28. A number of countries, including Argentina, Armenia, Belgium, Ecuador, Germany, Malaysia, Mexico, Portugal and Uruguay, highlighted that they had employed new information technology solutions to strengthen the integrity of the procurement process and to better disseminate information. The functionalities of these portals ranged from serving as platforms to announce tenders, to allowing interested future participants to download templates of documents, to fully integrated electronic solutions allowing paperless electronic procurement.

29. Argentina reported that the procurement system in the country was based on the electronic system, Ar-Compra, which allowed for the electronic management of traditional procedures of selection such as tenders, private-public contests and direct contracts. The system supported the competitive bidding process and enabled the publication and search for business opportunities in the public market and the submission of tenders. The information technology platform integrated all services associated with the production, preparation, publication and systematization of data as a central tool in institutional management.

30. Armenia stated that its national legislation required all procurement decisions to be public. The invitation for participation in the tender was either openly published or a special invitation was sent to pre-qualified participants. All information on the procurement procedure, including the procurement plans, invitation to tender, conditions of participation, criteria for selection, characteristics of items to be purchased, contract award, appeals filed against procurement procedures, and decisions of procurement appeals board were published on the official website (www.gnumner.am) and made available to the public.

31. Belgium reported that transparent publication of procurement decisions — prior information notice, contract notice and award notice — was ensured by publication in the Official Journal of the European Union and the "Bulletin des Adjudications" for those cases where the procurement contract was above a certain threshold. When the value of the contract was below this threshold, only the contract notice was publicized and advertised locally. Contracts awarded by negotiated procedure were exempt from advertising when their estimated amount was lower than the thresholds established by the European directives.

32. Ecuador, Malaysia and Uruguay reported that their national legislation required the tender notices to be posted on a Government-managed Internet portal and for the procurement to be managed electronically in the form of a catalogue established on the government procurement website to provide visibility to calls for tenders. The website further allowed for persons and companies to register as potential procurement providers.

33. Portugal stated that, in order to enhance transparency, non-discrimination and fair competition, a single national web portal for public procurement, called BASE, centralizing all information on public contracts, had been established. Interested future participants could download from this website the template of the documents for participation. All calls for tenders, suppliers' queries, bid documentation, statistics on the procurement processes, and public contracts were recorded and organized through this e-procurement system. The portal centralized all information

on public contracts that was published in the electronic edition of the Portuguese Official Journal and other certified electronic platforms.

34. According to the submission of Mexico, in order to promote transparency in public procurement, an electronic system of information on public procurement, CompraNet, was developed. Through the CompraNet system, all procurement information including minutes of the clarification meetings, the presentation and opening of proposals were made public and freely accessible. The system was modified to include the Module Information and Market Intelligence for Public Procurement or CompraNet-IM, which converted the data contained in CompraNet into a format that was useful for citizens and provided flexible and timely access to government procurement information.

35. The Russian Federation reported that transparency of the procurement process was ensured by law through the means of mandatory online public consultations on the public procurement plans.

36. The United States highlighted that the transparency of the procurement process was ensured through the statutory right of access to federal government records, including those relating to public procurement, unless such records fell under one of the exemptions that protect interests, personal privacy, national security and law enforcement. This legal requirement obliged federal agencies to proactively disclose or post on their websites government decisions and records as well as to provide access to such records upon request.

37. Bosnia and Herzegovina reported that it was currently in the process of establishing an e-procurement system with services, documents and information that would be provided through an Internet portal to both contracting authorities and potential bidders. This system would facilitate the communication between the bidders and contracting authorities. The legislation required all legal persons involved in public procurement (both contracting authorities and potential bidders) to register in an electronic register.

Procedures, rules and regulations for review of the procurement process, including a system of appeal

38. Establishing a clear system of procedures, rules and regulations for review of the procurement process allows authorities to address complaints, appeals and potential irregularities and is indispensable for the integrity of the procurement system.

39. Such a system may rely on administrative review, on judicial review or on a mix of the two, depending on the specificities of the legal system of the States parties. The Convention requires that an effective system of review also include an effective system of appeal, allowing for the decision of the review body of first instance to be subject to a formal appeal.

40. Armenia, the Czech Republic, Ecuador and Germany, stated that they had established special review or oversight bodies to deal with the administrative review of procurement decisions to ensure that they were carried out in line with the principles of transparency, competition and objectivity in decision-making.

41. Other States, such as Belgium, Lebanon, Mexico, the Republic of Moldova, the Russian Federation and Turkey, reported relying on existing systems of administrative and judicial review.

42. According to the submissions of Lebanon and the Russian Federation, under their legal systems, procurement procedures could be challenged in court to establish if a violation of the procurement legislation has taken place, using established procedures for appealing administrative decisions.

43. Algeria reported that specially established tender evaluation committees analysed offers, declaring them eligible or ineligible, as appropriate. Similarly, ad hoc appeal committees were formed to decide on the outcome of any appeal and on the finalization of contract awards.

44. According to the submission of Germany, in tender procedures with a value exceeding the threshold under the EU directives, a remedy was available in the form of speedy review procedures before an independent tribunal, with the possibility to appeal to a court. The independent tribunals were set up in the authorities for the protection of competition. Upon a successful challenge, the contracting authority could be barred from entering into the contract concerned. The laws provided for damage claims, and, in some cases, for the contract awarded against the rules to be rendered null and void.

45. According to Mexico's report, the Government used surveys to review the implementation of the procurement process. The surveys gave the opportunity to bidders to express opinions and give comments on a specific procedure, which were then analysed and incorporated into the corresponding file. Appeals and complaints related to a procurement procedure, invitation to tender, award of contract, etc., were submitted to and addressed by the Ministry of Public Administration or the Internal Control Office of the Attorney General's Office. Mexico reported that a procurement decision could also be challenged in the Federal Court of Fiscal and Administrative Justice.

46. Armenia noted that a specialized Procurement Appeals Board had been established, consisting of independent and impartial officers and representatives of customers and non-governmental organizations, who served on a rotating basis.

47. The Czech Republic reported that the Office for the Protection of Competition had been established to ensure that market behaviour was in compliance with competition rules and benefitted the consumers as well as to supervise the procedures of awarding public procurement and concessions, thereby ensuring better transparency in public spending. The Office for the Protection of Competition was also responsible for reviewing the actions of procurement officials and the contracting authorities, exercising supervision over procurement officials and the contracting authorities, and participating in drafting and amendment of public procurement and concession legislation.

48. Ecuador reported that the National Public Procurement Service had been established as a specialized procurement agency with competencies to oversee the procurement process. In this role, it was able to request information from public and private entities, monitor procurement procedures, and inform the Comptroller General and the Attorney General of the State of violations of the procurement legislation. Persons with a material interest in a case could file a complaint with the National Public Procurement Service, which in turn notified the supervisor of the contracting entity and suggested measures to rectify the process or suspended the procedure. In addition to the opportunity for administrative and judicial review, a mediation or arbitration procedure also existed.

49. Uruguay reported that the Agency for State Procurement and Contracting was the body tasked with monitoring the regulatory framework and carrying out the procurement process. It was further responsible for verifying the compliance of contract awards with the legislation and ensuring transparency in the procurement process.

50. Similarly, Turkey reported that the Public Procurement Authority had been established and given competencies for the accurate implementation of the procedures described in the Public Procurement Law. The law regulated prohibited acts and conduct in procurement, as well as persons prohibited from participation in procurement proceedings. In cases where a violation was detected, the crime was investigated under the Criminal Code.

Selection of personnel and establishing a conflict of interest management system

51. The establishment of a sound and merit-based system of selection of personnel is an important prerequisite to ensuring the integrity of the procurement system. Such a system should take into account the provisions of article 8 of the Convention, with due regard to the specificity of the positions involved in procurement.

52. Depending on the national legal traditions, the personnel exercising procurement functions may be centralized in a single agency in charge of procurement procedures in the whole public administration, or may be placed in a decentralized procurement system.

53. In both a centralized and a decentralized procurement system, the Convention requires States parties to undertake special measures to promote ethical conduct and to effectively avoid and manage conflicts of interest in order to ensure the integrity of the procurement processes.

54. Argentina reported that the National Contracting Office was the governing body of the procurement system of the National Public Administration, which was responsible for the oversight of procurement in the central administration, decentralized agencies, national universities, armed and security forces. The Directorate of Policy Planning of Transparency was responsible for the oversight, analysis and development of legal frameworks, training to optimize state purchasing, monitoring important and vulnerable stages of procurement processes, as well as implementation of policies and preventive programmes against corruption.

55. Similarly, Kuwait and the United Arab Emirates reported that each country had established a specialized State body in charge of procurement activities.

56. Uruguay reported that the promotion of effective business practices in the public procurement system was ensured by the Procurement and Contracting Agency. The Agency also dealt with the management of conflicts of interest. The recruitment process was organized on a non-discriminatory basis under transparent, open and competitive procedures and a set of rules was established setting out the criteria for public officials to qualify for a position in the procurement administration.

57. Germany reported that it had established a conflict of interest management system with declarations of interest and methods to resolve conflicts in particular

cases. Staff found to have a conflict of interest should take steps to ensure that they were not involved in decisions relevant to that conflict. Staff were not permitted to take a secondary appointment without explicit permission; and only if this appointment would not lead to a conflict of interest.

58. Algeria reported that personnel selection was conducted based on the executive decree that included as an annex a code of ethics and professional conduct. It established the rights and obligations of public officials in the course of the procurement procedures. In cases of conflict of interest, the official must inform his/her supervisor and specific provisions prohibiting a person from awarding a contract when in a conflict of interest situation were provided for in the legislation. A post-employment prohibition was in place, preventing the procuring entity from awarding a contract for a period of five years to a former employee.

59. The Russian Federation reported that strict conflict of interest provisions were put in place to ensure that conflicts of interest were avoided, including detailed lists of incompatibilities and requirements for mandatory disclosure. The law prohibited people from participating in tender evaluation committees if they had a close family relationship with future contract parties and provided for mandatory personnel rotation.

60. Mexico reported that management of conflicts of interest was regulated by the Federal Law of Administrative Responsibilities of Public Servants and by the Federal Administrative Procedure Act. In addition, establishment of a specialized Ethics and Conflict of Interest Prevention Unit within the Ministry of Public Service was planned, in accordance with the instructions of the President.

61. With regard to personnel selection and conflict of interests management system, Belgium reported that the Federal Public Service Chancellery of the Prime Minister and the Federal Public Service Budget and Management Control have issued a circular entitled "Public procurement — ethical conflict", aimed at preventing conflicts of interest. The circular set a post-employment cool-down period of two years during which time a former public official was not eligible to win a public contract with the contracting authority for which he or she had worked.

62. Armenia stated that employees of the procurement coordination subdivision and officials were included in the list of qualified professionals to carry out procurement duties after successfully passing the exam on the proficiency of legislation. Additionally, legislative provisions outlined the situations of conflict of interest and required the committee member having such a conflict related to the procurement procedure to recuse him or herself from the procedure.

63. Kuwait also reported that a conflict of interest management system was introduced for employees engaged in procurement.

64. Switzerland stated that its central purchasing department for the entire civil administration regularly included an integrity clause in its contracts with third parties and provided for the possibility of terminating the contract in case of attempted corruption.

Other administrative practices promoting integrity in procurement

65. While establishing a strong and effective legal and institutional framework is an important prerequisite for the integrity of the procurement system, it is equally important to promote specific administrative practices that would limit the risk of corruption.

66. It is important that the enabling legal framework is complemented by various additional strategies implemented at the administrative level that have been found to be effective in certain environments to reduce corruption in procurement. These may include measures to strengthen integrity of the business sector and bidder employees; measures to exclude unethical participants from the procurement process (debarment); measures promoting collective action (integrity pacts); and measures to promote civil society monitoring (public consultations).

67. A number of countries, including Armenia, Germany, Malaysia, the Philippines, Portugal, the Russian Federation and Turkey, reported that they used debarment as a means to ensure integrity of the procurement process.

68. While less common, some countries have indicated also using extensively public consultations (the Russian Federation), promotion of integrity through collective action — integrity pacts (Malaysia) or rotation of personnel (Germany and Uruguay).

69. Armenia reported that a "blacklist" had been established that included people or organizations prohibited from participating in procurement procedures following the decision of the procurement appeals board for a period of three years.

70. Germany reported that administrative practices promoting integrity in procurement were set out in the Directive Concerning the Prevention of Corruption. Germany further explained that the debarment of tenderers who had been convicted of offences such as corruption or who were guilty of other forms of misconduct was possible. In some cases, such as in the case of a conviction for a corruption offence, debarment of the bidder from the procurement procedure was mandatory.

71. According to the submission received from Turkey, its national legislation regulated sanctions against prohibited acts and conduct. Those who were established to have been involved in a prohibited act or conduct were prohibited from participation in any tender carried out by all public institutions and authorities, for a period of one to two years depending on the nature of the act. Similarly, Turkey referred to its procurement legislation which set out those who were prohibited from participating in public procurement directly, indirectly or as a subcontractor, either on their behalf or on behalf of others because of conflicts of interest. The Public Procurement Authority kept a record of those who were prohibited from participating in tenders.

72. Argentina reported that extensive training of all individuals involved in public procurement management was mandatory. In addition, a new programme had been introduced whereby a legal adviser was made available to provide personalized advice in procurement matters if needed.

73. The Russian Federation observed that an undisclosed conflict of interest could be a legal ground for the courts to declare the procurement contracts null and void. Citizens and civic organizations were empowered by the law to carry out civic control over the activities of the public bodies, including in relation to procurement issues. In addition, in cases provided for by the law, holding open public consultations was mandatory.

74. Malaysia reported that, since December 2010, all government contracts covering supplies, works and services should include an integrity pact. All of the parties involved, including administrative and approval officers, bidders and board/committee members of government procurements, were required to sign the integrity pact and to pledge not to engage in any activities or transactions leading to corruption and bribery during the implementation period of the projects. If this undertaking was breached, pre-agreed sanctions, including blacklisting, could be enforced. The government department or agency was also required to sign an undertaking not to demand or accept bribes and guaranteeing access to information and the publication of the award decision. An arbitration process was built into the integrity pacts to strengthen the enforcement of their provisions. Civil society groups were involved in the monitoring of the contracting process, as has been done in several countries who have introduced the use of integrity pacts. Malaysia highlighted that the use of such pacts has successfully reduced public expenditure.

75. Germany and Uruguay reported that for certain positions in the management of public funds that were seen as especially vulnerable to corruption, the rotation of officials was required.

C. Transparency and accountability in the management of public finances

76. A strong system for the management of public finances ensures the proper spending of public finances, strengthens confidence in the institutions and ensures high quality of public services. To address this challenge, article 9 (2) of the Convention requires States parties to promote transparency and accountability in the management of public finances.

77. To this effect, the procedures for adoption of the budget are of principal importance. Identification of the country's legitimate fiscal aims is dependent on the process of drafting, reviewing and adopting the budget by a number of institutions usually involving all three branches of power. Effective and inclusive budget planning helps to prioritize projects that are of real need for the society.

78. Many countries, including Ecuador, the United States and Uruguay, reported that they had introduced transparency and accountability as main principles in their public financial management which were secured and guaranteed by national law.

79. All of the countries reported that the national budget was approved by the parliament and that the discussions on the management of public finances were made public, with the documentation and proposals often made available on the website of the parliament or the ministry of finance.

80. Germany reported that the draft of the Budget Act together with the draft annual budget were presented to the *Bundesrat* and the *Bundestag* (the two federal parliamentary bodies) by the Government and were published publicly immediately after presentation. The plenary parliamentary debates were also public.

81. The United States reported that the Office of Management and Budget developed an annual budget for the Executive Branch upon input from each department and agency. It was then transmitted to the Legislative Branch, that is, the Congress, which was responsible for deciding on the allocation of public finances

regarding the object of financing and amount. Congressional appropriations committees draft appropriations bills that reflect these decisions. It was explained that an appropriation, once enacted, provided departments and agencies with the legal authority to spend the amount of money appropriated for the purposes for which it was appropriated. This legislative appropriations process gave the public an opportunity to provide input into the amount the Government spends through public hearings, committee meetings and public debate.

82. Algeria reported that budget discussions were organized by the Directorate General of Budget, together with the representatives of ministries and public institutions and were reflected in the Finance Act. The Finance Act contained both budget provisions and definition of the country's macroeconomic priorities and was prepared by the Ministry of Finance. The preliminary law was subject to government discussions and was presented to the Council of Ministers that directed it to the Parliament for the final reading. Lastly, the President signed the Finance Act into force.

83. Kuwait and Oman reported that the Minister of Finance was responsible for the preparation of the budget, which was then submitted to the Government for approval.

Timely reporting on revenue and expenditure

84. Proper management of public finances is impossible without a regular flow of information to the relevant decision makers and to the public. Corruption in the budgetary process could lead to lower tax revenues and higher spending, thus undermining the stability of the country. Timely reporting of revenues and expenditures demonstrated how the implementation of the budget was carried out. According to submissions of most of the countries, there was a requirement to regularly submit to parliament information on the implementation of the budget. In general, public parliamentary procedures were a main tool to report on revenue and expenditure.

85. Germany reported that the Federal Minister of Finance had to submit annually to the two houses of parliament an account of all revenues and expenditures as well as assets and liabilities during the preceding financial year.

Effective system of accounting and auditing

86. Proper accounting and rigorous auditing lie at the foundation of the effective management of public finances. They ensure the financial accountability of the government agencies and allow for collection of information on the budget implementation and for identification of potential problems or irregularities.

87. Most of the countries reported that control and oversight measures were carried out by both the parliament of the country and specialized structures such as a national audit office or an office of internal financial control.

88. Germany reported that the German Supreme Audit Institution, whose members enjoy judicial independence, audited the accounts and examined the performance, regularity and compliance of financial management with the relevant rules. The Institution submitted an annual report directly to the two houses of parliament as well as to the federal Government. The responsible federal Government departments and agencies were required to render accounts for each financial year (or other periods, where permitted) on the basis of the closed accounts. Germany emphasized

that failure to report was a breach of duty and could lead to disciplinary and, where applicable (for example, in case of fraud), to criminal sanctions.

89. The Republic of Moldova stated that the Court of Accounts of the Republic controlled the administration and use of public funds and the management of public property. The auditors of the Court of Accounts were required to undergo a certification procedure in order to maintain their qualification as pubic auditors.

90. Kuwait reported that a committee in the parliament was responsible for monitoring and protecting public funds. The access to information legislation could be used to obtain information for revenue and expenditure of governmental institutions, with the exception of the institutions related to national security.

Effective and efficient system of risk management and internal control

91. Article 9, subparagraph 2(b) of the Convention calls for establishment of an "effective system of risk management and control", as key to detecting irregularities. It refers to introducing preventive measures such as separation of functions, hierarchies of approvals and reviews or ex-post facto measures to identify problems such as financial reporting, performance monitoring, protection of whistle-blowers and internal audits.

92. Introducing effective systems of risk management is a relatively new approach which requires States to introduce measures to identify and prioritize individual budgetary risks and to consider measures for addressing those risks.

93. Germany reported that a risk assessment system was in place at the federal level (at the state level, the *Länder* maintained their own systems). According to the Directive Concerning the Prevention of Corruption, each agency was required to assess the areas of activity within the agency which were especially vulnerable to corruption, and to apply certain measures for staff entrusted with them. In order to support this process, a "handbook on identifying areas of activity especially vulnerable to corruption" has been developed and provided to all governmental agencies. Each agency was also required to appoint officers that would be responsible for taking the measures under the Directive.

94. Germany further explained that reporting requirements were in place in order to mitigate any negative effects of the decentralization of these responsibilities across the federal institutions. Each federal agency or other entities under federal public law (except for some social insurance institutions) were required to annually report facts and figures on corruption prevention using a website form. The questionnaire that was currently being used had more than 50 questions. On the basis of these reports, an annual report was submitted to the *Bundestag*. After discussions on the report in the relevant *Bundestag* committee, the report was published.

95. The United States reported that its legislation encouraged agencies to consider the concept of "enterprise risk management" which was a strategic business discipline that addressed a full spectrum of an organization's risk. Enterprise risk management encompassed all areas of organizational exposures to risk, and sought to prioritize and manage risk exposure as an interrelated risk portfolio rather than as individual silos of analysed risks. A chief risk officer had to be appointed or designated, who was responsible for managing an agency's risk portfolio.

96. In addition, it was highlighted that United States legislation provided guidance for performance and strategic reviews as part of the federal budget process. With regard to internal controls, the Office of Management and Budget defined the responsibility for internal control in federal agencies, and developed the implementation circular that provided guidance on the implementation for the Federal Managers Financial Integrity Act. The law required federal agency executives to periodically review and annually report on the agencies' internal control systems.

97. Malaysia reported that a system of risk management and control of the national budget expenditure on development projects and programmes had been established by the National Action Council chaired by the Prime Minister. This Council was supported by the National Action Working Committee which was chaired by the Chief Secretary of Government at the national level. At the state level, the State Development Council was chaired by the Chief Ministers, and at the district level, the District Officers were responsible for chairing the District Development Committee.

98. Malaysia emphasized, however, that the sole responsibility in the monitoring and evaluation of the various plans and policies rested with the Implementation Coordination Unit based in the Prime Minister's Office. Through the years, this Unit had developed a number of monitoring mechanisms to meet different planning requirements.

99. According to the submission of Ecuador, access to information in this area was ensured by the Organic Law of Transparency and Access to Public Information. The State guaranteed free access of the public to all budgetary and financial information. Public enterprises, public financial institutions and agencies were required to publish properly audited financial statements. Further, entities and bodies that were included in the national system of public financial management were required to provide budgetary and financial information to the Ministry of Finance and the general public, in accordance with the law.

Provide for corrective action in case of failure to comply with the legal requirements

100. Identification of the problem, allocation of responsibility and taking measures to ensure the accountability of the responsible officials is another important requirement of the Convention. It includes both taking action on the results of audits and enforcing sanctions against the responsible officials.

101. The United States stated that the Anti-Deficiency Act consisted of provisions of law that were passed by Congress to prevent departments and agencies from spending or obligating funds that had not been appropriated. The Act prohibited agencies from entering into contracts that exceeded the enacted appropriations for that year, or purchasing services and merchandise before appropriations were enacted.

102. In addition, the United States highlighted that there were disciplinary sanctions for violating the provisions of the standards of conduct for misuse of government resources and that criminal statutes could also be applied in case of intentional misuse of public funds and resources.

103. Ecuador reported that the Ombudsman could request corrective actions in case of non-compliance and the failure to provide information to the public. If necessary,

the Constitutional Court could impose penalties in a case when public information was not provided to a citizen.

III. Conclusions and recommendations

104. The information contained in the present report highlights the breadth of the legislative and administrative measures that have been taken by States to strengthen integrity in procurement in accordance with article 9 of the Convention against Corruption. The States parties that made submissions generally adopted a comprehensive approach in relation to ensuring that transparency, competition and objective criteria in decision-making were guiding principles in their procurement legislation.

105. Some measures that have emerged from the submissions include those to promote integrity in the bidding process, the exclusion of non-compliant participants from tenders, the involvement of civil society and the use of debarment.

106. A further theme that emerged is the importance of transparency and effective civic oversight and enforcement mechanisms. Countries have highlighted their efforts to use electronic tools and portals to facilitate and simplify procurement procedures and to provide access to information and promote civic engagement.

107. Additional information was provided by some States in relation to paragraph 2 of article 9 on transparency and accountability in management of public finances, as well as on article 10.

108. In their submissions, the States parties underlined the importance of strong systems of management of public finances for the integrity of the institutions, with special attention paid to the aspects of developing and adopting budget and internal controls. Other measures that have emerged from the submissions on article 9, paragraph 2, include measures for ensuring transparency and civic oversight of budgetary spending and the importance of strong and effective systems of auditing public finances. Risk management is an emerging topic, with a number of countries paying specific attention to it.

109. As part of its discussions, the Working Group may wish to consider how States can continue to strengthen procurement systems and the management of public finances to prevent corruption.

110. The Working Group may further wish to recommend to States parties that they strengthen the exchange of information on anti-corruption practices to enhance transparency, integrity and objective decision-making in improving their national legislation in the areas of procurement and to promote exchange of good practices in the area of public finance management.

111. The Working Group may wish to request the secretariat to continue its efforts to gather information on good practices related to integrity in procurement and in management of public finances, particularly in preparation for the next implementation review cycle.